

In the High Court of Punjab and Haryana at Chandigarh

CR No.1349 of 2018 (O&M)

Date of decision: September 20, 2018

Dinesh Ahuja @ Bitta @ Bittu through LRs

..... Petitioner

Versus

Shiv Dayal

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.P.S. Jammu, Advocate for the petitioner.
Mr. Himanshu Arora, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

C.M.No.19988-CII of 2018

This application is filed for impleading the legal heirs of deceased Dinesh Ahuja @ Bitta @ Bittu.

Application is allowed subject to all just exceptions.

Legal heirs of the petitioner as mentioned in para 2 of the application are brought on record for the purpose of prosecuting this revision petition.

Application stands disposed of.

Main Case

Tenant through his legal heirs is in revision petition against order passed by the Rent Controller ordering his eviction, affirmed by learned Appellate Authority. The petitioner had been ordered to be evicted on the ground of non-payment of rent. Landlord-respondent filed a petition seeking eviction of the tenant from a piece of land measuring 390 square yards on various grounds including non-payment of rent from October,

2009 to September, 2012. Eviction was also on the ground of bonafide requirement.

Tenant defended the petition by filing a reply wherein he took a stand that he had entered into the agreement to sell with the landlord and suit for specific performance of the agreement to sell has been filed. No rent was tendered by the petitioner. It is not in dispute that suit for specific performance of the agreement to sell has been dismissed although first appeal is pending.

Both the Authorities below have ordered eviction on the ground of non-payment of rent.

Learned counsel for the petitioner has submitted that it is a case of extreme hardship as tenant had undergone a heart transplant in Fortis Hospital on 19.11.2017. He had submitted that the petitioner is now ready to pay the rent and he has tendered the rent.

On the other hand, learned counsel for the respondent pointed out that rent petition was filed on 11.09.2012. Tenant contested the petition but did not choose to pay the rent. Hence, tenant cannot be subsequently granted opportunity to pay the rent.

This Court has considered the submissions of learned counsel for the parties and with their able assistance, gone through the judgments passed by the Courts below.

As per the Haryana Urban (Control of Rent and Eviction) Act, 1973, non-payment of rent is one of the grounds for eviction of the tenant. The provisions of Act provide that the tenant is to tender the rent on the first date of hearing. This provision was interpreted by Hon'ble the Supreme Court in the case of **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation**, 2002(5) SCC 440 to effect that the Rent Controller would assess the provisional rent. However, in the present case tenant choose to take a defence that no rent is payable as he has

entered into an agreement to sell. The agreement to sell itself does not create any right. It is not a document of title. The tenancy does not come to an end merely on account of the fact that agreement to sell has been entered into between the parties unless there is specific stipulation to that effect in the agreement to sell.

Learned counsel for the petitioner could not draw attention of the Court to any such Clause in the agreement to sell. Further, as noticed above, suit for specific performance of the agreement to sell has been dismissed by the Court. As regards illness of the tenant, who is no more, it will be noticed that heart transplant operation took place in the year 2017 whereas petition was filed on 11.09.2012.

In view of the aforesaid, there is no ground to interfere. Hence, revision petition is dismissed.

(ANIL KSHETARPAL)

JUDGE

September 20, 2018

jt

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No